FORFEITURE

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The Minister of Justice, Sir Alexander Campbell, has lately given at Ottawa, a most important decision upon a petition asking to prosecute a Bank, in the name of Her Majesty, for forfeiture of charter.

Such a petition was not unknown in the annals of the Ministry of Justice, and, if we deem it proper to make it known now in a special manner, through the press, it is not that we have a hostile object in view against any one, but because all the Provinces of the Dominion are concerned in that petition, and all the citizens as well as Parliament are highly interested in knowing whether corporations may violate their charter, without having to fear the hand of justice,and, whether their influence over the government be great enough to impede it in the fulfilment of its duty.

The question of right which have been argued, have a close connexion with some of the principles which are the basis of the english constitution, and thereby, highly concern all classes of society. If the ideas emitted by the minister of justice be correct, it will become a necessity to redress the existing evil, and to adopt, in the parliamentary session which will begin in a few days, a legislation able to remove the defects of the law. It will become the duty of the government to consider seriously which is the wisest line of conduct to follow, in order that, in the future, the law may reach incorporated bodies by an act of parliament, in the same manner as it reaches private individuals. It will also become the duty of Parliament to see that the scale of justice be so well regulated as not to turn more on one side than the other, so as to make it an impossibility for the public interest to be wronged in one case more than another.

We understand fully that we place ourselves in a very unfavorable position by endeavoring to criticize the honorable minister on his way of seeing things and acting upon them, and we shall undoubtedly be reminded of it. Yet, the decision which has been given, and the strange principles invoked by Sir Alexander Campbell to support it, are of so important a nature, that we cannot flinch from our duty. Hence, we deem it necessary to make a statement of the question, also, to draw the attention of Parliament on that decision and to show its danger; this, we shall endeavor to do with the greatest moderation.

Our remarks will be as short as possible.

Before entering upon our subject, let us remark that Sir Campbell had not to decide whether or not the Bank in question had violated its charter or infringed the privileges granted to it by law. This belonged to the court of Exchequer. The petition simply asked the minister of justice leave to prosecute the bank, at the same time, offering security for costs.

I

The judgement of the Hon. minister is lengthy and very ably written; we would be tempted to say that it is skilfully written. In the first part, it expresses the doubt whether it be within the power of a court of justice to annul the charter of a corporation existing by virtue of an act of parliament.

" I find no authority, it says, of a case where an " english court has assured to annul a charter of in- " corporation created by act of parliament."

It is possible that the Hon. minister did not find a precedent of this nature; but there is something more powerful than a precedent, and that is a principle; and the conclusion arrived at by Sir Campbell, which decided him to set aside the petition, is well calculated to surprise, especially coming from a man who possesses a long parliamentary experience, and who is bound to known thoroughly the mechanism of the english constitution.

If Sir Campbell has looked over the authorities

which were quoted for him, and especially the famous author, Blackstone, he must have seen that corporation are constituted principally in two ways, either by act of Parliament, or by royal charter, and that they may come to an end by a forfeiture legally incurred.

" In England, says Blackstoue, the King's consent " is absolutely necessary to the erection of any cor- " poration, either impliedly or expressly given, and " that consent is given either by act of Parliament, or " by charter."

" The King, according to the same author, has also " the prerogative of erecting corporations, whereby a " number of private persons are united and knit to- " gether, and enjoy many liberties, powers and im- " munities in their politic capacity, which they were " utterly incapable of in their natural." [1 B. p. 497.]

" All the other methods, therefore, whereby corpo- " rations exist, by common law, by prescription, and " by act of Parliament, are of the most part reducible " to this of the King's letters patent, or charter of " incorporation." [2 B. p. 275.]

These principles being laid down, Blackstone says that the general duties of all politic bodies considered as corporations may be reduced to this only point, i.e., that they are bound to act in conformity with the end. whatever it may be, for which they have been erected or instituted by their founder.

This being the case, it may happen and it does happen sometimes that those corporations violate their charter and make a bad use of the power confered upon them, which is not astonishing, since they are made up of individuals subject to human frailties, and liable as well as private persons, to deviate from the end of their institution. For this reason the law has appointed suitable persons to visit them,to inquire into and to correct all irregularities that arise in corporations.

" I know it is generally said, that civil corpora- " tions are subject to no visitations, but merely to the " common law of the land; and this shall be presently " explained. But first, as I have laid it down as a

" rule, that the founder, his heirs, or assigns, are the " visitors of all lay corporations, let us inquire what is " meant by the *founder*. The founder of all corporations, " in the strictest and original sense, is the King alone, " for he only can incorporate a society; and in civil " incorporations such as a mayor and commonalty, " etc., where there are no possession or endowments " given to the body, there is no other founder but the " King. The King being thus constituted by law " visitor of all civil corporations, the law has also " appointed the place wherein he shall exercise this " jurisdiction: which is the court of King's Bench: " where and where only, all misbehaviours of this " kind of corporations are inquired into and redressed, " and all their controversies decided. And this is " what I understand to be the meaning of our lawyers " when they say that these civil corporations are " liable to no visitation; that is that the law having " by immemorial usage appointed them to be visited " and inspected by the King, their founder, in his " majesty's court of King's bench, according to the " rules of common law, they ought not to be visited " elsewhere, or by any other authority."

It is then most evident from these quotations that civil corporations are subject to be visited by their founder who is the King or his delegates, and that those visitations are made through the medium of tribunals, upon the information of the attorney-general of the King or in his name.

The american law is similar to the English law in this respect.

" To render the charters or constitutions, ordinances " and by-laws of corporation of perfect obligation and " generally to maintain their peace and good govern- " ment, the bodies are subject to *visitation*; or, in " other words, to the inspection and control of tribu- " nals recognized by the laws of the land. Civil cor- " porations are visited by the Government itself, " through the medium of the courts of justice.

" Civil corporations, whether public or private, being " created for public use and advantage, properly fall

" under the superintendency of the sovereign power " whose duty it is to take care of the public interest, " whereas corporation whose object is the distribution " of a private benefaction, may well find jealous guar- " dians in the zeal or vanity of the founder, his heirs " or appointees." (Angell & Ames s. 684.)

The principles which regulate this question are clearly given by the most eminent legal writers, and contrary to the pretention of Sir Alex. Campbell, they make no distinction between corporations erected by letters patent, by royal charter or by act of parliament. Tribunals have jurisdiction over all civil corporations, without any regard for the authority by which they were instituted.

The Hon. minister of justice admits truly that the Crown, through its courts, can, for good reasons, annul the letters patent which it has granted, but he is in doubt whether the Crown can, through the medium of these courts, annul a charter granted by act of Parliament. According to the quotations we have made, there is no difference between a body incorporated by letters patent and one by act of Parliament. Letters patent are granted by a person authorized by act of Parliament by a delegation of its powers, according to the well known maxim: *Qui facit per alium facit per se.* And in the case of a corporation created by parliament, the king, when giving his sanction, becomes thereby its founder and obtains the right of control given to him by common law, and which he exercises through the medium of tribunals.

However, as banks cannot be incorporated by letters patent by virtue of the general act concerning joint stock companies, the minister of justice comes to the conclusion that it was not the intention of Parliament to delegate its powers for their incorporation, and thereby established a distinction between the case of a bank incorporated by special act of Parliament and that of a company incorporated by virtue of the provisions of the general act It is an unnatural conclusion drawn from a false principle, for Sir Campbell adds immediately after: " And even as to general

" patents, the powers therein contained, when they " are laid down in enabling acts of Parliament, only " come into life by *the breath of the Crown*, and the- " refore I think differ essentially from acts of parlia- " ment creating corporations."

Where can Sir Campbell find that difference to which he alludes? Are not acts of parliament clothed, by the royal sanction, with the *breath of the Crown*?

Besides, if Sir Campbell was looking for a precedent, in spite of the principles given by authors, there was one in this country and one that he knew. He has even made a mention of it in his judgment, when he says that the *National Bank* of Quebec, incorporated by act of parliament, had been prosecuted for forfeiture of charter by virtue of the *fiat* of the Attorney General, and he adds that, in some of the United States, it has been decided that, with regard to this view of the case, there is no distinction to be made between charters granted under the great seal of the state, and those granted by legislature.

Having argued at length on this matter, and endeavoured to demonstrate the difference which exists between a corporation created by letters patent and that erected by act of parliament, it is strange to hear the minister of justice say *that there is no need for him to give an opinion* and that, the only reason why he has emitted those doubts, was, to show how much their existence increases the responsibility of the Attorney General.

It was hardly possible for him to have any doubt about the matter, in presence of the authorities which he had by him and of the precedent of his predecessor in the ministry of justice, the hon. M. James McDonald. Besides, supposing that there was any ground for his doubt, was he justified in giving expression to it, when he had not the right to judge? It was a question which could be argued before the court of Exchequer, but which Sir Campbell had no right to decide.

From all this, it is clear that, if the pretentions of the hon. minister were well grounded, there would be

no other control over civil corporations but that which parliament could exercise itself. It would then be necessary for parliament to become a court of justice in order to inquire into the nature of facts and pronounce upon them. Corporations would no longer be subject to the visitations of the King, which are made through the medium of tribunals; they would become priviledged bodies, having the facility to infringe more or less and more than less their charter and it would be most difficult to reach them and punish them.

We may well say that the doctrine emitted by the minister of justice seems to us contrary to the sound interpretation which should be given of the constitution by which we are ruled, and if there could really exist a doubt on the matter, parliament should examine the question and immediately prepare a remedy for the annoyances and dangers of such a doctrine.

II.

In the second place, Sir Campbell reproaches the petitioner for not having urged in his petition that he had suffered by the infractions of which the Bank is accused. It is a very queer reproach, and without attaching more importence than it is necessary to that point, we will say that the petitioner proves in his petition that both the public and himself have suffered by the acts of which the Bank is accused. True it is a fact that the plaintiff is a shareholder in the capital stock, but it is not as such that he complains, nor is it as such that he could and had a right to complain. He alleges that the Bank has been prejudicial to the public in general, by the violation of its charter and that he, as a private individual, has sufferd by those violations. The Bank has charged him usurious interests; it has entered in competition with him in the manufacturing and commerce of shoes; it has increased his responsibility as shareholder, in monopolizing the shares of his capital to the amount of $43,600, etc. The plaintiff was therefore perfectly right to complain as he has done.

Let us pass to a more important point.

III

In the matter before us, is the attorney general bound to grant the request made to him, when, by the petition itself and by the *affidavit* which accompanies it becomes evident that there are sufficient reasons to authorize a prosecution ? Yes, because it is a question of right. The only discretion which the minister can exercice is to verify if the violation of the law alleged in the petition is undeniable, and if the facts enumerated are sufficient in law, *prima facie*, to make that violation evident. The attorney general has not the right to take the evidence of witnesses and according to a well established procedure, it is customary in such cases for the Plaintiff to proceed *exparte* without giving any notice to the adverse party, (Foster, on *scire facias*, p. 249.) It might be said that in such a request, the minister of justice acts the part of a grand jury in a criminal court ; he examines whether there is sufficient ground for a law suit.

What says chapter 88 of the consolidated statutes of Lower Canada, sec, 9 :..... and whenever " any " corporation, public body or Board offends against " any of the provisions of the act or acts creating it... " or violates the provisions of any law in such a man- " ner as to forfeit its charter by mis-user..... " *it shall be the duty of Her Majesty's attorney gene-* " *ral* for lower Canada *when he has good reason to* " *believe that the same can be established by proof, in* " *every case of public interest and also in every such* " *case in which satisfactory security is given* to indem- " nify the government against all cost and expenses " to be incurred by such proceeding, to apply for and " on behalf of Her Majesty to the Superior Court, " etc."

In conformity with these provisions of the law, and according to principles recorded by legal authors and sanctioned by practice, Hon. M. J. McDonald, the predecessor of Sir Alex Campbell in the ministry of justice, allowed the prosecution of the National Bank

of Quebec for forfeiture of its charter, upon the simple petition of the plaintiff.

Did the present minister of justice endeavor to act in conformity with the prescriptions of the law and practice followed in such a matter ?

Did he consider that *it was his duty*, as the clause quoted above has it expressly, to grant the request ? Far from it ; he went so far as to allow the accused party to present declarations made by virtue of the law for the suppression of voluntary oaths and even the production of certificates not sworn to. By that irregular procedure, he placed plaintif in a very disadvantageous position. The latter could not cross question the witnesses called against him nor control their evidence. Besides, he had witnesses who refused to give their evidence through fear of the Bank, and the minister himself had not the power to force these witnesses to give their evidence. The petitioner therefore could present only a part of his case, and his own witnesses said only what they wanted to say.

The fact of allowing a proof and a counter proof on a simple request to proscute, was simply trying the case itself and interfering with functions which belong to a court of justice and not to a minister of the Crown.

IV

There is another defect in the judgement which we criticize and that is where the minister of justice acknowledges that he is obliged to apply the laws prior to the confederation but not those posterior to it. Here are his words :

" I have myself examined the statute creating the " office which I hold. It is Act. 31 Vic., Ch., 39, and " by Section 3, the attorney general of Canada is " charged with the powers and duties which, by the " laws of the several provinces, belonged to the office " of Attorney General in each province up to the time " when the British North American Act, 1867, came " into effect, and which laws, under the provisions of

" the said act,are to be administered and carried into " effect by the Government of the Dominion.

" The B. N. A. Act, 1867,Sec. 91, certainly confers " on the Dominion exclusive legislative authority " with respect, *inter alia*, to banking, the incorpora- " tion of banks and the issue of paper money, but I " can find nothing in it which imposes on the Go- " vernment of the Dominion the duty of *administe-* " *ring or carrying such laws into effect* ; and on me " the consequent duty of prosecuting a forfeiture of a " bank charter.

" It is the duty of the Government of the Domi- " nion to administer and carry in effect such laws as " those relating to customs and Inland Revenue and " Militia and so forth ; but laws relating to banks, " save as regards duties imposed by the Banking act " on the executive, or to be inferred from the law,are " administered in the Province where the bank is " domiciled."

This is indeed something new.

What then is that act 31 Vict. Ch. 39, spoken of by Sir Campbell ? It is a law adopted at the beginning of confederation and creating a department of the civil service called the " department of justice." This act, in its provisions which haue any relation to the laws prior to confederation, was passed not to impose new duties on the attorney general of Canada, but really to assign to him the duties which, by virtue of the laws prior to confederation,belonged to the attorney general of each province, when matters falling under the control of the federal government would come into question. The intention was to divide the duties imposed on the attorney general and this is the meaning of the act. Is there are duties to be fulfilled by an attorney general by virtue of the old laws and if those duties concern things which belong to the attributions of the federal government, they shall be fulfilled by the attorney general of Canada and not by the attorney general of a province.

For example, take article 997 of the code of civil procedure of Lower Canada which imposes some

duties on the attorney general of Lower Canada. After the passing of the act 31 Vict. Ch. 39, those duties must be fulfilled by the attorney general of Quebec with regard to corporations created for local objects, and by the attorney general of Canada with regard to corporations for general purposes of the Dominion, such as Banks.

Moreover, the act. 31 Vict. ch. 39, says expressly that "the minister of justice shall exercise the rights "and fulfil the duties attached to the office of attor- "ney general of England by the laws or usage;" now according to the authors whom we have quoted, we know what is the duty of the attorney general of England, when the king wishes to exercise the right of visitation which he possesses over incorporated bodies.

Besides the principles of law as well as good sense indicate that the government of the Dominion has sufficient authority to see that the laws adopted by the federal Parliament are carried into execution.

The minister of justice cannot forget that there is a well known principle of constitutional law which goes to say that the king (that is to say the Executive) is charged with the execution of the laws.

By refering to the legal authors, with whom he is well acquainted, Sir Campbell would have been reminded that laws are administered by the power which makes them.

Sir Campbell would have remembered also that the government which creates a corporation can alone prosecute to obtain the forfeiture of the charter granted.

Sir Campbell would furthermore have remembered that the crown being, for the country's welfare, interested in the maintenance of its own laws, it belonged to it to issue the *scire facias*.

For the same reason, Sir Campbell could have satisfied himself that the person whose duty it was to take such proceedings, was the attorney general of the Dominion, since the charter of the accused party was a charter of the Dominion. The minister of justice had nothing to do but to consult such authors as

Foster, Angel and Ames, Brice, Fisher Abbott's digest, etc. In a word we must own that we cannot understand hon. Sir Campbell could say : " No duty " imperatively devolves upon me under the language " of the statute creating my office in respect of such a " proceeding as the present," when the law makes it an imperative duty for him according to ch. 88 of the consolidated statutes of Lower Canada, when also a law prior to confederation reminds him of that duty, which is made so evident by the famous act 31 Vict. ch. 39, that the ignorance of it is not excusable.

V.

The minister of justice has examined the several allegations of the petition and reviewed certain facts with which the Bank is reproached. This intention was not only to see whether the arguments enumerated proved by themselves that the law had been violated, but also to enter upon the very merits of the case and thus encroach upon the province of the tribunal whose right and duty it was to judge the facts.

We shall follow him on that ground and it will be an easy matter for any one to convince himself that the accusations were sufficiently founded to authorize the attorney general to allow a prosecution for forfeiture of charter.

The Bank was accused of having, from the 2nd of january 1874 to the 19th of march 1881, habitually and constantly violated and transgressed the fundamental articles of the laws by which banks are governed, and especially its charter, of having made a bad use of its powers as a corporation, of having arrogated to itself functions which it was expressly forbidden to exercize, and of having assumed franchises and privileges which the law does not confer upon it. It had been guilty of these illegalities in the following manner.

1. By exacting constantly usurious rates of interest, exceeding seven per cent ; that is to say a rate of interest or discount of eight and nine per cent and sometimes more.

2. By lending money and making loans either directly or indirectly on security, and real estate mortgages.

3. By lending money and making loans on the security and pledge of the capital of the bank.

4. By lending money and making loans on the security and pawn of goods, wares and merchandise, in a manner different from that required by law.

5. By buying goods, wares and merchandize.

6. By the selling and cartering of goods, wares and merchandize.

7. By being engaged in operations different from those which commonly belong to a banking business.

8. By acquiring and holding real estate for purposes foreing to the administration of its lawful business, and by selling it in cases prohibited by law.

9. By the buying and cartering either directly or indirectly of the shares of its capital stock, as it is mentioned in the petition.

Particular cases were given in support of each of the above accusations.

In answer to the first accusation, the Bank admits having charged usurious rates of interest exceeding seven per cent but alleged having done it thinking that it had the right to do it.

Is the fact admitted ? Yes.

Whose duty was it to judge the excuse of the Bank? It was the duty of the courts of justice. Starting from this, the decision of the question should have been carried before the tribunals and the minister of justice had no right to decide it, which, nevertheless, he took upon himself to do, Sir Campbell has acted as would have done a justice of the peace at a preliminary hearing by pronouncing the accused guilty or not guilty instead of examining solely whether there be cause for his trial before the court of Queen's Bench.

Moreover, when he says in his judgement that a bank cannot incur any penalty by receiving a rate of interest above seven per cent and that the forfeiture of its charter would be the greatest penalty it could

be subject to, he has given a false interpretation of the law. He makes the law say what was never in its intention to say. The legislator, by the clause 52 had in view to blot out the penalties enacted against usury by former laws, and not to declare that a bank by charging more than seven per cent interest, would not be subject, by virtue of common law, to lose its rights of corporation.

We may add that this question is important under every respect and that those who do any banking business are exceedingly interested in knowing the opinion of courts of justice on this matter.

The Bank denied the second accusation, but it was proven that it had opened an accouct of $18,000 in favor of a certain manufacturing company and that it had exacted a mortgage on real estates for the same amount and that it had made advances to the same company before the mortgage as well as after.

The obligation, signed before notary executed for advances made and *to be made.* The accountant of the bank at that time states that advances were made by the bank after the date of the mortgage.

The manager of the company states also that the bank did advance money after the date of the obligation, on the security of the mortgage.

The bank, in an opposition made by itself before a court of justice, states that up to the date of the obligation, the company was indebted to it for the sum of $8,400 only; out of that sum $2,150 were notes to which the company was not a party.

If the indebtedness to the bank was only $8,400, what is the reason of that mortgage of $18,400 taken as security for advances made and *to be made, as the act says*?

Does it not lead to the presumption that those advances were made on the security of that mortgage?

It has also been proven before the minister of justice, that the bank, at another date and through intermediate persons, had exacted a mortgage for the sum of $26,000 from the shareholders of another company, and then, on that security, had made advan-

ces of money. The answer of the accused party was that the socalled intermediate persons had acted for themselves and not for the bank. Several declarations were produced by the Plaintiff to prove the falsehood of this answer.

In any case, the declarations and the authentical acts establish facts which Sir A. Campbell could not judge, but which were sufficient to authorize the hearing of the case before a court of justice.

On the 3 accusation, it has been made evident that on a certain date, the shares of the bank owned by H. L. were under seizure. The bank consented to advance him $364.77 on the endorsement of E. B. provided he gave his shares as security. Then on the same day, H. L. gave his note endorsed by E. B. and transferred his shares to him as security. Immediately, on the sameday, E. B. transferred the shares to the cashier *in trust*, and H. L. got his money.

Does it not appear from those facts that a loan was made by the bank on the security and pledge of shares of its capital stock ?

In answer to the 4e accusation, the cashier of the bank says that in October and November 1879, the bank advanced to a certain person $80 to pay the men he had employed sawing lumber. This loan was made on condition that the individual would pay back the amount and apply a certain portion of that wood to pay the interest which he was owing the bank on a debt of $4000. That person refunded the $80 to the bank, $28 more in money and $284 in building lumber. Three witneses prove that the lumber was carried to the bank and retailed by it. It becomes therefore evident that the lumber had been accepted by the bank as security of the advance of the $80 as well as security for the interests of the $4000.

As for the other accusations, it was proven that although forbidden to do so by section 40 of the law on banks, the bank has acquired goods, wares and merchandize, to wit : the stock of A. & L. store consisting of groceries, hardware & merchandize of all sorts ;

Building lumber ;

A bankrupt stock consisting of carriages, tools of carriage maker :

Another bankrupt stock consisting of leather, shoes, tools, machines, office furniture and material for the manufacture of shoes.

Besides the proof states that the Bank although forbidden by the law to do so, has sold those goods.

For the same reason, the Bank has violated the law and gone beyond the limits of its charter by buying the bankrupt stock of a shoe company and, for nearly two years, running the manufacture for its own benefit by retailing shoes. The evidence in the breef states that the Bank had bought new material, which it sold wholesale and retail and that it sent commercial travelers through the country to facilitate the sale of its products.

The accused party has also undertaken operations foreign to a banking business and has made the acquisition of credits and debts not verified by promissory notes or negotiable goods, such as the acount books of three bankrupt commercial societies.

Well, the Bank not satisfied with having bought the account books of those bankrupt companies just mentioned, has also sought to obtain some mortgages against one of the bankrupt partners, and has thus acquiered the mortgages owed by him to two of his creditors and to a building society.

The Bank had no mortgages on those properties and it was not in any of the cases mentioned by the law, therefore its made of acting was a violation of its charter.

Il was also a violation of the law, when in those very cases, it assumed the payment of a compromise and the unlimited obligations of two bankrupties.

Moreover the bank has acquired rights known as litigious by buying the claim of R. & M. against a railway company and the right to the debentures which were to be issued by certain municipal corporations in favor of that company, subject to certain conditions to be fulfilled by that company.

When that acquisition was being made, those municipalities were unwilling to issue their debentures, giving as a reason that the conditions of the regulations had not been fulfilled,

Always contrary to law, the Bank has acquired shares in its own capital stock.

We would remark here that there is only 40 per 100 paid on the shares of that Bank.

Has the accusation been made good ? Yes, by the list of shares transferred to the Bank, and by the report made at that time to the government by the cashier, stating that he was the bearer *intrust* for the Bank of $43,600 worth of shares.

Naturally, the depositors rely on this, that they can fall back on the shareholders for the recovery of the balance of shares and for the doudle responsibility in the case of the Bank becoming insolvent. When a Bank lessens that security, it destroys its credit the same ratio and increases the responsability of its shareholders.

Here then is a dangerous trafic, forbidden by law, and which was proven before the minister of justice.

We shall mention a last accusation, and it is this : that this Bank had become security for a compromise and thereby took upon itself the responsibility of nearly $90,000, for a consideration of $14,248.61.

The accused party admitted, with few exceptions, all the facts brought against it, but it gave, as an explanation, that those acts had taken place between itself and its debtors and that it had thus acted to protect itself. Can such a reason alter the nature of the affairs of a Bank. and annul a law whose provisions are so peremptory ? If such were the case in the usual course of things, any man who breaks the law would have an excuse to prevent its execution and order in society would come to an end.

In any case, looking at the proof in the brief, was there ground for a law suit ? Yes, certainly, for it appeared that the law had been violated. But the Bank in question invoked an excuse, or gave an explanation which was an admission of the fact brought

against it. Then who was to decide whether that Bank had acted in good faith when it charged usurious rates of interest, and whether it had the right to act with its debtors in a manner forbidden by law? The court of Exchequer and not the minister of justice.

There was then ground for a suit against the accused party, and when Sir Alex. Campbell refused to grant his *fiat* to allow the prosecution, he acted in a manner detrimental to serious interests, and leads the public to believe that, henceforth, corporations will be at perfect liberty, and may according to their fancy, violate their charter, without any dread of the visitation of courts of justice. It is a mistake.

The granting of a prosecution could not be very prejudicial to the accused party; nothing else besides the forfeiture of its charter by the courts of justice was of a nature to hurt the bank seriously, but a public body must not be more protected from the reach of justice than private individuals. When these violate the law, they are punished. When a corporation evidently goes beyond its powers and infringes the privileges granted to it by the legislator, why should it be protected by those who, by their position and duty, should be the safe-guards of public interests? Can a minister of justice refuse in conscience to protect the weak against the strong? Is it even sound policy to act in that manner?

If such be the case, the law concerning banks must be looked upon as a dead letter. True, it forbids those financial institutions to charge usurious interests exceeding seven per cent, to lend money directly or indirectly and make advances on mortgage securities; true, it forbids them to buy and sell goods, wares and merchandize, to trade in lumber, to control manufactures and to run them for their own benefit, to assume the payment of unlimitted obligations, to acquire disputed rights, to negotiate the shares of their capital stock; yet, if a bank does all that is forbidden by law, it must not be put to trouble nor stopped by a prosecution from committing fresh illegalities or errors, because, according to the opinion of an easy minister, such a prosecution might be prejudicial to it.

We do not beleive that parliament will be diposed to sanction a doctrine so perverse, so fraught with dangers and so much at variance with the sound notions of right and justice. The emission of such a proposition is sufficient for any well thinking man to cast it a side, and there will be but one voice to disapprove the extraordinary ground taken by Sir Alex. Campbell, and repudiate this way of interpreting the laws which regulate this matter.

A country is not well governed unless there is liberty of action for all, and unless all have free access to the courts of justice to obtain the reform of those abuses, which in their opinion, are for them a source of annoyance or suffering.